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ever, a trial judge should not deny a motion for a bill of particulars unless he has strong reasons for doing so and articulates them clearly.

Edward C. Abell, Jr.

DONATIONS — REVOCATION FOR NON-FULFILLMENT OF CONDITION

By a single authentic act, one Manson sold certain property to the City of New Orleans and purportedly donated two additional lots "to be used for public school purposes."¹ The city operated a school on the two lots for over twenty years, after which the building at times remained vacant and at times was rented, the rental proceeds being applied to the general operating expenses of the School Board.² The building was demolished a number of years prior to institution of the present suit. Upon learning that the School Board had advertised the lots for sale, defendants, who had been placed in possession of Manson's succession, demanded revocation on the ground of non-fulfillment of the donation's condition. The School Board then filed suit to have its title declared merchantable, and defendants reconvened for revocation of the donation. The court of appeal held that the School Board had no right to sell or rent the lots; failure to continue operation of a school, however, had not resulted in forfeiture of the lots, which the Board could still use for any "school purpose."³ On certiorari to the Supreme Court of Louisiana, *held*, reversed.⁴ The transfer of the two lots was an onerous do-

1. The pertinent part reads: "And the said James J. Manson did further declare that, in consideration of the purchase by the City of New Orleans of the above described property for the price and sum mentioned therein, he does, by these presents, cede, donate, abandon, set over and deliver, without any cost whatsoever to the City of New Orleans, to be used for public school purposes, the following . . . property, to-wit . . ." *Orleans Parish School Board v. Manson*, 132 So.2d 885, 887 (La. 1961).

2. The School Board acquired title to the property from the city in 1955 by virtue of the provisions of LA. CONST. art. IV, § 12, as amended.

3. *Orleans Parish School Board v. Manson*, 126 So.2d 82 (La. App. 4th Cir. 1960). The court said: "Whether it must actually conduct classes, or may use it as a school playground, athletic field, library or school warehouse, is not before us in this proceeding. All we are called upon to decide here is whether the School Board can part with title and use the proceeds generally for the public schools." *Id.* at 89.

4. Justice Hamlin dissented, primarily on the ground that the transfer of the lots sold and that of those purportedly donated "are so enmeshed that the entire act is one of sale." *Orleans Parish School Board v. Manson*, 132 So.2d 885, 890 (La. 1961). He was of the further opinion that the donor did not intend the

nation and not a dedication to public use. A conditional donation for public purposes may be revoked for non-fulfillment of the condition even though the act of donation did not expressly provide for revocation if the condition were breached.⁵ *Orleans Parish School Board v. Manson*, 132 So. 2d 885 (La. 1961).

The Louisiana Civil Code defines a donation inter vivos as "an act by which the donor divests himself, at present and irrevocably, of the thing given, in favor of the donee who accepts it."⁶ An onerous donation is a donation burdened with charges imposed on the donee.⁷ Donations to public bodies are to be distinguished carefully from dedications to public use. Dedications are of two types, statutory and "common law."⁸ Statutory dedications are subject to the formal requirements of R.S. 33:31 and 33:5051, whereas "common law" dedications need not be in any particular form,⁹ but result simply from an intention of the dedicatory to dedicate his property to public use and an acceptance by the public.¹⁰ A statutory dedication vests title in the public, but

words "to be used for public school purposes" to be a condition imposed on the transferee.

5. The court also specifically recognized that LA. CODE OF CIVIL PROCEDURE art. 1871 (1960) was a legislative overruling of *Burton v. Lester*, 227 La. 347, 79 So. 2d 333 (1955). In dictum, the court in *Burton* said that the existence of another adequate remedy would preclude a judgment for declaratory relief. Article 1871 provides: "Courts of record within their respective jurisdictions may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for; and the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The declaration shall have the force and effect of a final judgment or decree."

The School Board contended that revocation of the donation was barred by the prescriptions of five and ten years, under Articles 2221, 3542, and 3544 of the Civil Code. The court said: "This point cannot be considered as prescription has never been specially pleaded by the School Board as a defense. See Articles 3464, 3465 of the Civil Code and Article 927, Louisiana Code of Civil Procedure." *Orleans Parish School Board v. Manson*, 132 So. 2d 885, 889, n. 2 (La. 1961).

6. LA. CIVIL CODE art. 1468 (1870).

7. *Id.* art. 1523. The word "charges" has been held to be synonymous with the word "conditions." *Voinche v. Town of Marksville*, 124 La. 712, 50 So. 662 (1909).

8. *Arkansas-Louisiana Gas Co. v. Parker Oil Co.*, 190 La. 957, 183 So. 229 (1938). Common law dedication is sometimes called "implied dedication." Some cases and writers have recognized a further subdivision of dedications called tacit dedications. *Wharton v. City of Alexandria*, 228 La. 675, 77 So. 2d 1 (1954); Comment, *Dedication of Land to Public Use*, 16 LOUISIANA LAW REVIEW 789 (1956). Others have treated what are encompassed by the term "tacit dedication" as common law dedications. See Robinson, *Dedication of Streets and Alleyways in Louisiana*, 25 TUL. L. REV. 88 (1950).

9. This constitutes an important distinction between dedications and donations inter vivos, for the form prescribed by Civil Code Articles 1536-1558 must be met for there to be a valid donation inter vivos.

10. *Arkansas-Louisiana Gas Co. v. Parker Oil Co.*, 190 La. 957, 183 So. 229 (1938).

a "common law" dedication only gives the public a servitude.¹¹

Whether a particular transfer to the public is a statutory dedication or a donation is particularly important with regard to the requirements for revocation of the transfer. It has been held that a statutory dedication cannot be revoked for any cause unless the act of dedication expressly provides for the right of return.¹² The bases for revocation of a donation, however, are provided by Civil Code Article 1559, one of which is non-performance of the conditions imposed by the donor.¹³ In cases involving revocation of donations for public and religious purposes, the position of the Supreme Court on the necessity of an express reservation of the right of return has been inconstant. In *De Pontalba v. New Orleans*,¹⁴ a case decided under Spanish law, the court refused to revoke the donation of a hospital to the city, on the ground that breach of a condition did not justify revocation where there was no express reservation of the right of return. This decision was subsequently distinguished in a case involving a donation of land to the Town of Marksville "solely to build a market," on the ground that it "was made under the Spanish law for pious purposes, and under that system was irrevocable, in the absence of an express stipulation of the right of return."¹⁵ In *Board of Trustees v. Rudy*,¹⁶ however, the court cited two cases involving *dedications*¹⁷ as support for the proposition that an express stipulation of the right of return is necessary for revocation of a conditional *donation*, thus concluding that a donation of property "to be used for religious purposes" could not be revoked. The language specifying the use to be made of the property was interpreted as merely a "precatory" condition having no legal effect. In *Board of Trustees v. Richardson*,¹⁸ the latest decision on the question prior to the instant case, the court expressly refused to follow its decision in *Rudy*, stating it to have been "at variance with our civil law."¹⁹

11. *Texas & Pac. Ry. v. Ellerbe*, 199 La. 489, 6 So.2d 556 (1942).

12. *Wilkie v. Walmsley*, 173 La. 141, 136 So. 296 (1931); *Jaenke v. Taylor*, 160 La. 109, 106 So. 711 (1925).

13. The other grounds for revocation of donations inter vivos provided by Article 1559 are the ingratitude of the donee, the non-fulfillment of the eventual conditions which suspend their consummation, and the legal or conventional return.

14. 3 La. Ann. 660 (1848).

15. *Voinche v. Town of Marksville*, 124 La. 712, 713, 50 So. 662 (1909).

16. 192 La. 200, 187 So. 549 (1939).

17. *Wilkie v. Walmsley*, 173 La. 141, 136 So. 296 (1931); *Jaenke v. Taylor*, 160 La. 109, 106 So. 711 (1925).

18. 216 La. 633, 44 So.2d 321 (1949).

19. *Id.* at 644, 44 So.2d at 325.

The instant decision specifically rejected the contention that the law of Louisiana no longer distinguishes between donations and statutory dedications to public use as to the necessity of an express reservation of the right of return.²⁰ In distinguishing between the two means of conveyance the court sustained the prior Louisiana jurisprudence to the effect that such a reservation is required for revocation of a statutory dedication.²¹ The primary significance of the instant decision, however, is its holding that a donation for public purposes may be revoked for breach of a condition even though it contains no reservation of the right of return. Thus donations for religious and for public purposes will be accorded the same treatment in this regard. It is implicit in this determination that specification of the use to be made of the donated property is considered an expression of the motive or cause of the donation. The determination having been made that no express reservation of the right of return was necessary for revocation of the donation, the instant case involved no difficult problem as to whether the condition had been violated. The court pointed to the fact that the school building had been demolished several years before and the lots had since remained vacant, concluding that this violated the condition. Although any further consideration of what would be compliance with the condition was thus unnecessary, the court stated in dictum that a sale of the lots and application of the proceeds to general school purposes would not.

It might be argued that in the case of a donation of property for use by the public, the donor's primary intention is to benefit the entity to which the donation is made, and that words indicating the use to be made of the property should not be so construed as to defeat this primary purpose. Opposed to this construction, however, is the idea that one normally will not place

20. The court said: "Although similar in their practical operation, dedications for public use and donations to public subdivisions or corporations conditioned upon a particular public use are not governed by the same legal rules. A dedication may be implied as well as express, and the dedicated property becomes vested in the public. *Livaudais v. Municipality Number Two*, 16 La. 509 (1840). Hence, it is considered to be irrevocable in the absence of an express reservation on the part of the former owner of the right of revocation.

"The donation *inter vivos*, on the other hand, transfers the title to the donee, even though the donation is conditioned on a particular public use and it must conform to the provisions of the Civil Code on the subject in order to be effective. When the donor has imposed charges upon the donee there is no necessity for an express stipulation of a reverter clause as the Civil Code (Article 1559) vests in the donor the right to claim a revocation for failure of the donee to comply with the conditions of the gift." 132 So.2d 885, 890 (La. 1961).

21. See note 12 *supra*.

in a legal document words not intended to have legal effect. It is submitted that the instant decision was sound in that it honored the donor's intention insofar as it was reflected in the act of donation.²² The difficulty with the decision is that it allows a donor to dictate the use to be made of property in perpetuity. If such a result is to be avoided, the proper solution would appear to be legislative rather than judicial. One solution would be to extend R.S. 9:2321, which provides that the title to property donated to religious entities is perfected by the passage of thirty years' continuous and uninterrupted possession and use for the purposes intended by the donation,²³ to cover a donation such as that involved in the instant case.

John Schwab II

FEDERAL INCOME TAXATION — OIL AND GAS — DETERMINATION
OF HOLDER OF ECONOMIC INTEREST IN SHARING ARRANGEMENT
TRANSACTION

Petitioners' decedent owned, with others, mineral interests under unitized oil and gas leases covering Texas property. He and his group, collectively the Weinert group, transferred an undivided one-half interest in certain mineral leases and a production payment payable out of the proceeds accruing to the retained one-half working interest to two corporations, the Lehman group. Pursuant to this agreement, the Lehman group obligated itself to "loan and advance" to the Weinert group up to a certain amount to pay the share of production and recycling plant costs

22. Justice Hamlin, in his dissenting opinion, took the position that the failure of the donor to challenge the title of the City or School Board between the time the school was closed in 1926 and his death in 1952 was evidence that the donation was unconditional. *Orleans Parish School Board v. Manson*, 132 So.2d 885, 890 (La. 1961).

23. LA. R.S. 9:2321 (1950) reads in full: "There is hereby quieted and perfected title to real estate donated to church and religious representatives, associations, corporations or their successors or religious assigns where over thirty years continuous and uninterrupted possession and use for the purposes intended by the donation has been had and elapsed since the execution of the donation and the real estate is presently being possessed and used for the purposes intended in the donation." *Id.* 9:2322 provides: "In all such cases the donees or their successors, assigns, or representatives may effectively use, mortgage, hypothecate, encumber, alienate, or dispose of the property donated or any part thereof without regard thereafter to the conditions or charges imposed in the donation, and declaring the same to have been fully complied with to all intents and purposes by said lapse of time, possession, and use in compliance with said conditions or charges, and declaring the public policy served thereby as against restricting property from commerce."